

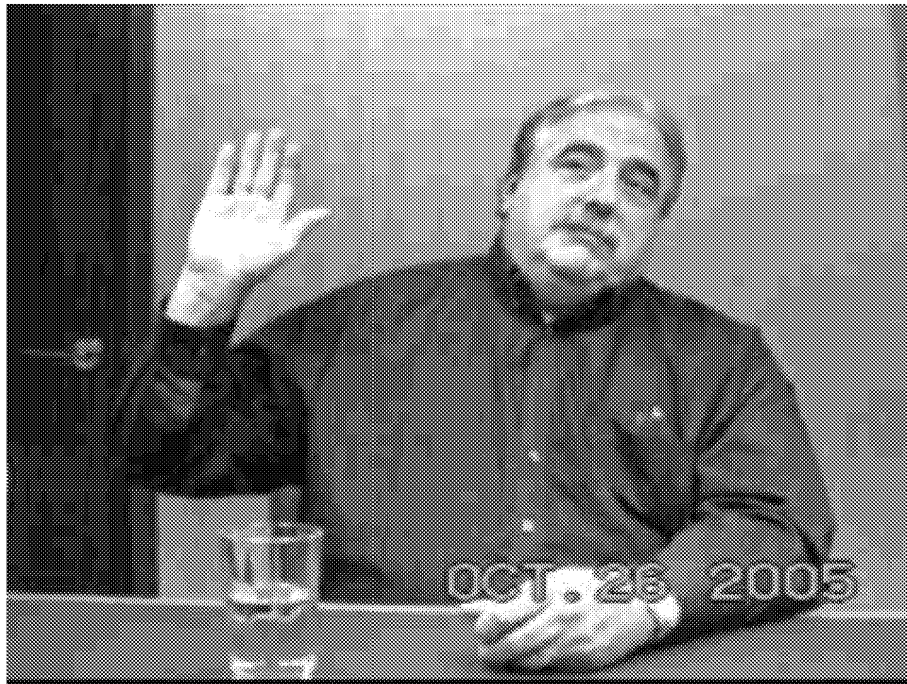
# EXHIBIT 9

United States District Court  
Eastern District of Wisconsin

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**Avery v. Manitowoc County**

04 C 986



Video Deposition of

**Eugene Kusche**

Recorded 10/26/2005 in Manitowoc, WI

9:35 am - 1:10 pm, 191 mins. elapsed

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**Magne-Script**

(414) 352-5450

*23017 Condensed transcript with index*

# Video Deposition of Eugene Kusche 10/26/2005

18 (Pages 69 to 72)

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<p>1 what you knew from that conversation, you had any</p> <p>2 conversation with any of the detectives in the</p> <p>3 department about that?</p> <p>4 A No.</p> <p>5 Q All right. And you're telling me that your</p> <p>6 recollection is that amongst yourselves, you and</p> <p>7 the detectives did not ever discuss Tom Beerntsen</p> <p>8 pressuring the sheriff in this case.</p> <p>9 A No.</p> <p>10 Q Okay. You mentioned a bit earlier in your</p> <p>11 testimony an Officer Colborn and a document that</p> <p>12 you saw about that; is that right?</p> <p>13 A That's correct.</p> <p>14 Q Okay. I'm going to show you Exhibit 124 in this</p> <p>15 case. And you've seen that before, right?</p> <p>16 A I saw this Monday.</p> <p>17 Q Had you seen it before Monday?</p> <p>18 A No.</p> <p>19 Q This document reflects a conversation between you</p> <p>20 and Douglass Jones on September 18th, right?</p> <p>21 A That's correct.</p> <p>22 Q That's shortly after it became public knowledge</p> <p>23 that Steven Avery had been exculpated by the DNA</p> <p>24 evidence and that Gregory Allen had been</p> <p>25 inculpated, right?</p>	<p>1 with the first sentence.</p> <p>2 A I wouldn't disagree with it.</p> <p>3 Q All right. And then he says in this memo that</p> <p>4 you told him that you were already aware of the</p> <p>5 article and about Steven Avery being released.</p> <p>6 A Correct.</p> <p>7 Q Then he says, "We chatted about unrelated</p> <p>8 matters."</p> <p>9 A Right.</p> <p>10 Q Probably about the political campaign, right?</p> <p>11 A Perhaps.</p> <p>12 Q Okay. Any other unrelated matters that you</p> <p>13 remember?</p> <p>14 A I don't recall.</p> <p>15 Q All right.</p> <p>16 A I don't have much recollection of the call.</p> <p>17 Q Then he says that your future plans, your health,</p> <p>18 your exercise regimen, he told you things about</p> <p>19 his family. Do you remember all of that</p> <p>20 occurring?</p> <p>21 A No.</p> <p>22 Q All right. Then he says as he, Doug Jones, was</p> <p>23 trying to close the conversation, you told him</p> <p>24 that you would retain the drawing.</p> <p>25 A Yes.</p>
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<p>1 A That's correct.</p> <p>2 Q Was the call that is reflected in this document</p> <p>3 initiated by Mr. Jones?</p> <p>4 A Yes.</p> <p>5 Q Do you remember what he said to you initially</p> <p>6 when he first introduced himself?</p> <p>7 A I think he wanted me to put up a -- this was a</p> <p>8 call, if I have the sequencing correct, that a</p> <p>9 campaign sign for someone for school board.</p> <p>10 Q Anything else that you recall that introduced the</p> <p>11 subject matter of the Steven Avery case?</p> <p>12 A I really don't recall how it came up.</p> <p>13 Q All right. Look at the first sentence, if you</p> <p>14 would. He says --</p> <p>15 A Okay.</p> <p>16 Q -- he called you on the afternoon --</p> <p>17 A Oh, okay.</p> <p>18 Q -- of September 11th to tell you that there was an</p> <p>19 article in the Herald Times Reporter about the Avery</p> <p>20 case and that Avery had been released. Do you see --</p> <p>21 A That may have been how it started.</p> <p>22 Q Okay.</p> <p>23 A I really don't recall that much about the</p> <p>24 conversation.</p> <p>25 Q Okay. But in any event, you're not disagreeing</p>	<p>1 Q Do you remember telling him that?</p> <p>2 A No.</p> <p>3 Q At the time that you spoke to him, you in fact</p> <p>4 had the drawing, though.</p> <p>5 A Yes.</p> <p>6 Q All right. Had he asked you to keep it?</p> <p>7 A No.</p> <p>8 Q Do you know why you told him that you would</p> <p>9 retain the drawing?</p> <p>10 A I would imagine we were anticipating this event.</p> <p>11 Q Meaning that the question of the drawing would</p> <p>12 come up --</p> <p>13 A Sure.</p> <p>14 Q -- in subsequent legal proceedings.</p> <p>15 A Of course.</p> <p>16 Q All right. He goes on and he says, referring to</p> <p>17 you, "He then told me that in '95 or '96, Andy</p> <p>18 Colborn had told Tom Kocourek, former Manitowoc</p> <p>19 County Sheriff, that an officer from Brown County</p> <p>20 had told Colborn that Allen, and not Avery, might</p> <p>21 have actually committed the Beerntsen assault."</p> <p>22 Okay? That is what Exhibit 124 says, correct?</p> <p>23 A That's correct.</p> <p>24 Q Okay. Did you in fact tell that to Douglass</p> <p>25 Jones?</p>

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19 (Pages 73 to 76)

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<p>1 A I don't recall.</p> <p>2 Q All right. Does seeing this document, 124,</p> <p>3 refresh your recollection?</p> <p>4 A No.</p> <p>5 Q All right. Do you have any reason to disbelieve</p> <p>6 what this document says you told Doug Jones?</p> <p>7 A I recall Colborn saying something to me, and I</p> <p>8 might have said something to him on the side. I</p> <p>9 don't know if Tom Kocourek's name came into it.</p> <p>10 I don't recall that.</p> <p>11 Q All right. Anything else with respect to that</p> <p>12 sentence that...</p> <p>13 A Again, that's all I can recall.</p> <p>14 Q So you knew about Gregory Allen in 1995 or '96 --</p> <p>15 A No. No. I --</p> <p>16 Q -- because Tom Colborn told you.</p> <p>17 A No. He didn't tell me that in 1995, '96.</p> <p>18 Q Okay. Then --</p> <p>19 A He said he had the conversation in '95, '96.</p> <p>20 Q All right.</p> <p>21 A I didn't hear about it till in passing talking to</p> <p>22 Andy at one time, something being said within --</p> <p>23 probably within a matter of a couple of -- a</p> <p>24 couple, three months of this conversation</p> <p>25 occurring.</p>	<p>1 months prior to September 18th of 2003, Colborn</p> <p>2 told you this?</p> <p>3 A Made a comment on something to that effect.</p> <p>4 Q So this is before there's been any public</p> <p>5 knowledge or information, two to three months</p> <p>6 before there's been any public knowledge or</p> <p>7 information that Steven Avery has been</p> <p>8 exonerated. And you're telling us that Colborn</p> <p>9 told you, "Hey listen, back in '95 or '96, I</p> <p>10 found out that" --</p> <p>11 A When it came out -- It had happened aft-- well,</p> <p>12 I'm assuming two to three months, I don't know.</p> <p>13 After the information about Avery came out and</p> <p>14 before this conversation with Jones, that comment</p> <p>15 was made.</p> <p>16 Q Well, it's an absolute fact that the first time</p> <p>17 the district attorney found out about the results</p> <p>18 of the DNA examination was on September 3 of</p> <p>19 2003.</p> <p>20 A Okay. I have no --</p> <p>21 Q And this document -- look at it. This document,</p> <p>22 dated September 18th, is referring to a</p> <p>23 conversation between you and Doug Jones that took</p> <p>24 place on September 11th, 2003. Do you see that?</p> <p>25 A Yes, I see that.</p>
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<p>1 Q What happened within a couple, three months of</p> <p>2 this conversation?</p> <p>3 A Andy making a comment to me about this. Because</p> <p>4 I said this thing comes up with conversations.</p> <p>5 And he may have said something, and it would not</p> <p>6 necessarily have been important to me that I</p> <p>7 would file it away for future memory. It might</p> <p>8 have just made a -- been a side comment at the</p> <p>9 end of a telephone conversation.</p> <p>10 But I did not receive that information in '95,</p> <p>11 '96. At that time I was chief investigator and would</p> <p>12 have done something. I would have -- And then I made</p> <p>13 this comment. I probably asked him, was Lenk, who was</p> <p>14 my replacement, aware of this. And that's how I would</p> <p>15 imagine I said he -- that Detective Lenk was aware.</p> <p>16 He was not that until -- He didn't take command of</p> <p>17 that bureau until 2003.</p> <p>18 Q You made a statement in the course of that long</p> <p>19 narrative answer that within two or three months</p> <p>20 of this time he told me.</p> <p>21 A I would say.</p> <p>22 Q Within two or three months of what time?</p> <p>23 A Of this telephone conversation that I had with</p> <p>24 Doug Jones [indicating Exhibit 124].</p> <p>25 Q So your testimony is that within two or three</p>	<p>1 Q So you're telling us that --</p> <p>2 A I don't --</p> <p>3 Q -- Colborn spoke to you before anybody knew</p> <p>4 anything about Steven Avery being exonerated?</p> <p>5 A I don't know when it occurred. It happened</p> <p>6 before this con-- [indicating Exhibit 124]. It</p> <p>7 may have happened that day.</p> <p>8 Q So you're changing your prior testimony that it</p> <p>9 was two to three months before this conversation?</p> <p>10 A I don't know. It happened before it. It</p> <p>11 happened after I left my position and before that</p> <p>12 conversation, anytime in there.</p> <p>13 Q Okay.</p> <p>14 A I don't know. I told you, I don't have very</p> <p>15 specific recollection of this conversation.</p> <p>16 Q Well, you seem to have recovered some of your</p> <p>17 recollection about it. Apparently Colborn</p> <p>18 identified Allen to you.</p> <p>19 A He -- I don't know that he identified Allen to</p> <p>20 me. I'm saying what my recollection was of this</p> <p>21 conversation, which is not very strong, was that</p> <p>22 Colborn made a comment to me about getting some</p> <p>23 information.</p> <p>24 Q Yeah. Okay.</p> <p>25 A And I related it in the phone conversation.</p>

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20 (Pages 77 to 80)

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<p>1 Q Okay. The statement goes on and says, the next 2 sentence says, "Gene stated," that's you. 3 A Mmm-hmm. 4 Q -- "that Colborn was told by Kocourek something 5 to the effect that we already have the right guy 6 and he should not concern himself." Now -- 7 A That -- 8 Q Did Colborn tell that to you? 9 A I don't recall it. 10 Q Did you tell that to Doug Jones? 11 A I don't recall it. 12 Q Do you have any reason to believe that Doug Jones 13 would misrecord what you told him? 14 A No. 15 Q Okay. Then it goes on to say that Doug Jones 16 asked you if this information was known. Do you 17 remember him asking you that? 18 A No. 19 Q Then it goes on to say that you said Lenk, MCSO 20 Lieutenant James Lenk, detective bureau command 21 officer, was aware. Did you tell that to Doug 22 Jones? 23 A If he put it there, I probably did. 24 Q And what was the basis for your knowledge about 25 that?</p>	<p>1 something about that information, right? 2 A If there's information on somebody else having 3 committed the crime, yes. 4 Q Well, and that's what this is saying. This is 5 what this information -- 6 A No, that's not what that's saying. I did not 7 have any information prior to my retirement that 8 someone else committed the crime. 9 Q Oh, I'm mis-- that was an ambiguous question on my 10 part. What I'm saying to you is, the information that 11 Colborn had about Greg Allen might have been the 12 actual assailant rather than Steven Avery would be 13 information about someone having committed a crime. 14 MR. BASCOM: Object to the form. 15 BY MR. KELLY: 16 Q Specifically Greg Allen. 17 MR. BASCOM: Same objection. 18 A I'm not really following that. 19 BY MR. KELLY: 20 Q Well, let's posit this. 21 A All right. 22 Q Let's say that it's before May of 2003 and you're 23 the chief investigator. 24 A Yes. 25 Q And an officer within the department comes and</p>
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<p>1 A It would had to have been from Andy Colborn. 2 Q Did you talk with Lenk about whether or not Lenk 3 was aware of this? 4 A No. 5 Q All right. At any time? 6 A Not to my recollection. 7 Q Okay. And then the statement goes on and says, 8 "He did not indicate in any way when Lenk first 9 learned about Colborn and Kocourek's 10 conversation." Is that true? 11 A I wouldn't know. 12 Q All right. "On late Thursday afternoon," he 13 says, "he found Mark Rohrer and apprised him of 14 the conversation with Gene," referring to you, 15 and then he says, "By the time I found Mark, he 16 indicated that he'd already been made aware of 17 conversation between Colborn and Kocourek." 18 A Okay. 19 Q Did he tell you that? 20 A No. 21 Q That you remember: he did not tell you that. 22 A Not to my recollection. 23 Q Okay. Now, you just testified a moment ago that 24 had you been in office at the time and chief 25 investigator that you would have had to do</p>	<p>1 says to you an officer in Brown County called me 2 and told me Greg Allen did the Penny Beerntsen 3 assault, not Steven Avery. Your testimony is you 4 would have to do something about that then. 5 A Yes. 6 Q Okay. And you would have to draw up a report of 7 having received that information from one of your 8 subordinates. 9 A Of course. 10 Q And you would have to follow-up on that lead; is 11 that right? 12 A Yes. 13 Q Okay. So the fact that you received this 14 information when you did would not cause you to 15 have to do that, you're saying, because you were 16 no longer in office. 17 A If the information here is that Lenk was aware of 18 it, I may have asked if that occurred. I'm 19 assuming that from this report. 20 Q Okay. Did you in fact at any time have any 21 discussion with the subject matter of Exhibit 124 22 with Tom Kocourek? 23 A No. 24 Q Did you at any time have any dealings with Jim 25 Gospodarek about the Steven Avery case?</p>